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October 4, 2021

**VIA ECF**

Hon. Katherine Polk Failla  
United States District Court  
Southern District of New York  
40 Foley Square, Courtroom 618  
New York, NY 10007

**MEMO ENDORSED**

**Re: McGucken v. Newsweek LLC, Case No. 1:19-cv-09617-KPF**

Dear Judge Failla:

We represent defendant Newsweek Digital LLC (“Newsweek”) in the above-referenced action. We write to briefly respond to a letter, dated October 1, 2021, from plaintiff Elliot McGucken’s (“Plaintiff”) counsel regarding a decision on a motion to dismiss in a recent case entitled *Hunley v. BuzzFeed, Inc.*, No. 1:20-cv-08844-ALC (S.D.N.Y. Sept. 30, 2021) (the “Decision”). *See* Dkt. No. 78. Plaintiff described this Decision as “highly relevant” to the instant case and made a number of supplementary arguments. However, Plaintiff mischaracterized the Decision in a number of respects, including by drawing legal conclusions from mere recitations of the allegations in the pleading, and misconstruing the court’s constraints on a motion to dismiss as a rejection of BuzzFeed, Inc.’s arguments on the merits. Newsweek respectfully requests that the Court disregard Plaintiff’s representations regarding the Decision in its consideration of the motions for summary judgment, which do not carry those same constraints.

We thank the Court for its attention to this matter.

Respectfully submitted,

Nancy E. Wolff

cc: All Counsel of Record (via CM/ECF)

The Court is in receipt of Plaintiff's October 1, 2021 notice of supplemental authority (Dkt. #78), and Defendant's October 4, 2021 response (Dkt. #79). The Court considers briefing on this issue closed.

Dated: October 5, 2021  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla". The signature is written in a cursive, flowing style.

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE